

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Case No. 8:03-CR-77-T-30TBM

v.

SAMI AMIN AL-ARIAN, et al.,

Defendants.

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SAMI AL-ARIAN'S THIRD MOTION FOR CONTINUANCE

COMES NOW, the Accused, SAMI AMIN AL-ARIAN, by undersigned counsel, and, pursuant to Local Rule 3.09, respectfully moves this Honorable Court for the entry of an Order continuing the currently scheduled trial date of June 6, 2005 to July 11, 2005.

In support of the foregoing, counsel state as follows:

1. On October 21, 2004, the Accused filed his first Motion for Continuance and incorporates that Motion herein by reference. See Docket 689.
2. On February 28, 2005, the Accused filed his second Motion for Continuance and incorporates that Motion herein by reference. See Docket 912.

History of Discovery Review

3. Sometime in late 2003 through June 2004, the government furnished Dr. Al-Arian with 21,000 hours of mainly Arabic conversations recorded pursuant to a FISA wiretap, the duration of which covered 1994 through 2003. This set of CDs was to be shared with his co-defendant, Mr.

Hammoudeh, while they were both incarcerated at USP Coleman. Out of 1883 CDs, 1564 CDs are conversations originally captured from 1994-1998 on reel to reel¹; they were subsequently transferred onto CDs and could only be listened to with a laptop, computer or a particular piece of equipment called a “juke box”.

4. On several occasions before the Magistrate Judge, counsel for Dr. Al-Arian requested a laptop or computer to enable discovery review; all of these requests were denied. Dr. Al-Arian was then left listening with the aid of the “juke box”.
5. Because of the restrictions of USP Coleman, including issues of understaffing, where Dr. Al-Arian was incarcerated, from 12/03 through 3/04, he was only allowed a listening time of 9 hours per week in the prison computer room.
6. In April, 2004, Dr. Al-Arian received 29,000 pages of tech cut summaries, which comprised approximately 6,500 phone conversations and faxes and this provided some guidance for prioritizing the conversations which needed to be reviewed.
7. However, shortly before the receipt of the tech cut summaries, Dr. Al-Arian was no longer allowed to listen to CDs in the computer room. The prison provided a ‘jukebox’ listening device. From April 2004 through June 2004, Dr. Al-Arian was allowed to listen to CDs for 8 to 10 hours per week. This limited amount of listening time was a result of battery failure;

¹ The majority of Overt Acts against Dr. Al-Arian occur in 1994 and are therefore included in this original category of calls previously recorded on reel to reel.

the batteries had a lifetime of 4 to 5 hours and they were changed twice a week.

8. In June, 2004, Dr. Al-Arian was transferred to the Hillsborough County Jail, where he was not allowed to bring any CDs and, thus, was not permitted any review.
9. Dr. Al-Arian stayed at Orient Road until August 2004, when he was transferred back to USP Coleman for five weeks until September 2004. During these 5 weeks, Dr. Al-Arian was not permitted to listen to CDs in the computer room and the jukeboxes were in disrepair, waiting to be sent back to the manufacturer. The litany of reasons given by the prison for their failure to allow any review of the CDs, included understaffing issues, juke box malfunction and battery failure.
10. Dr. Al-Arian was transferred back to Orient Road the first week of September 2004. Again, the prison refused him the opportunity to listen to the CDs because the jukebox was not allowed in the jail facility; in fact, at that time, no listening equipment was allowed.
11. Dr. Al-Arian stayed at Orient Road for 11 weeks when he was transferred back to USP Coleman the first week of December 2004.
12. At Coleman, the same problems arose which interfered with Dr. Al-Arian's ability to listen to these early conversations. In addition, USP Coleman experienced a lockdown status for 3 weeks during which time Dr. Al-Arian was deprived the use of the jukebox and, therefore, could not listen to these early, critical recordings.

13. Finally, in January 2005, Dr. Al-Arian was provided batteries for his listening equipment and was allowed to listen for 8 to 10 hours per week for two weeks. Because there was no outlet in his cell, Dr. Al-Arian could not charge any batteries and had to rely upon the prison staff to provide him with workable batteries.
14. Dr. Al-Arian was transferred back to Orient Road Jail in the first week of February, 2005. He was only allowed to utilize the MP3 player in his cell; this player allows for the listening of CDs, which were not originally reel to reel; these CDs comprise the conversations captured from 1999-2003.
15. To further frustrate review, the jail separated Dr. Al-Arian from Mr. Hammoudeh, preventing them from sharing the only copy of CDs. As a consequence, all the FISA conversations captured from the phone of the Islamic Academy of Florida, the Mosque, and from seven other phone numbers, from 2000-2003, have been provided to Mr. Hammoudeh because he is identified with these conversations. However, many of these phone conversations involve Dr. Al-Arian and he has not had the opportunity to review the great majority of them.
16. As a consequence, Dr. Al-Arian has only listened to a small fraction of the conversations captured from 1994-1998 on the 1564 CDs and a small minority of conversations captured from 2000-2003, identified with Mr. Hammoudeh.

17. The problems with this device and the jukebox were recounted to the Magistrate each time we were allowed to address the issue. (See Docket 476, as just one of many examples)
18. At the last hearing before the Magistrate, responding to counsel's recitation of continuing difficulties with the prison and Dr. Al-Arian's review of the thousands of hours of conversations, Magistrate McCoun suggested he was not persuaded by the defense and countered that, to paraphrase him, he thought Dr. Al-Arian was the most prepared defendant he had ever seen.
19. This opinion belies the history of the record here. Because Dr. Al-Arian has been prevented from listening to the significant majority of his own wire tapped conversations as a result of a host of correctional facilities rules, regulations, and prohibitions, he cannot adequately prepare a defense, nor can he assist counsel in this regard at this time.
20. This Court should also consider that these CDs couldn't be opened up or listened to with ease. Relevant and exculpatory conversations may be buried midway in the CD; depending upon what kind of listening device one uses, it can be a formidable task to search through these types of CDs to find the relevant conversation. Some of these CDs contain 80 conversations or more. This process is extremely time consuming and made all the more difficult because of the lack of proper equipment.
21. Previously, counsel asked the Magistrate if he would order the provision of a laptop or computer for Dr. Al-Arian, which would have accelerated

the review considerably. The Magistrate indicated he could not order the prison to allow a laptop or a computer for Dr. Al-Arian's review, ostensibly because of prison regulations.

22. In order to properly prepare for trial, Dr. Al-Arian has to review those conversations, buried in the midst of almost 2000 CDs and 21,000 hours of recordings, which are exculpatory and supportive of his defense. To accomplish this, the defense continues to request the trial date of July 11, 2005.

WHEREFORE, the Accused requests this Honorable Court to grant the Motion to Continue until July 11, 2005.

Dated: 25 May 2005

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno
Linda Moreno
Attorney for Sami Al-Arian